

Rule 11-101. Supreme Court's rulemaking process.

Intent:

To establish a procedure for the adoption, modification and repeal of rules of procedure and evidence, and rules governing the practice of law.

Applicability:

This rule shall apply to the Judiciary, the Utah State Bar, the Supreme Court's Advisory Rules Committees, the Supreme Court's Board of Continuing Legal Education, the Supreme Court's Ethics and Discipline Committee, and all other individuals and ~~agencies~~ entities participating in the rulemaking process.

Statement of the Rule:

~~(1) Creation and composition of Advisory Committees.~~

(A~~1~~) Statement of authority. Article VIII, Section 4 of the Utah Constitution provides that the Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. Section 4 further provides that the Court may authorize retired justices and judges and judges pro tempore to perform judicial duties. Finally, Section 4 provides that the Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law. To assist the Court with these responsibilities, the Supreme Court hereby establishes a procedure for the adoption, repeal and amendment of rules of procedure and evidence; rules regulating judges pro tempore and retired judges; and rules governing the practice of law.

(2) Creation and composition of advisory rules committees.

(2)(B~~A~~) Establishment of committees. There is hereby established a Supreme Court ~~A~~advisory rules Committee in each of the following areas: civil procedure, criminal procedure, juvenile court procedure, appellate procedure, evidence, civil jury instructions, criminal jury instructions, and the rules of professional ~~practice~~ conduct.

(2)(C~~B~~) Composition of committees. The Supreme Court shall determine the size of each committee based upon the workload of the individual committees. The committees should be broadly representative of the legal community and should include practicing lawyers, academicians, and judges. Members should possess expertise within the committee's jurisdiction.

(2)(D~~C~~) Application and recruitment of committee members. Vacancies on the committees shall be announced in the Utah Bar Journal. The notice shall specify the name of the committee which has

the vacancy, a brief description of the committee's responsibilities, the method for submitting an application or letter of interest and the application deadline. Members of the committees or the Supreme Court may solicit applications for membership on the committees. Applications and letters of interest shall be submitted to the ~~Administrative Office of the Courts~~ Supreme Court.

(2)(~~ED~~) Appointment of committee members and chair. Upon expiration of the application deadline, ~~the Administrative Office of the Courts shall forward all applications and letters of interest to the Supreme Court for consideration. T,~~ the Supreme Court shall review the applications and letters of interest and appoint those individuals who are best suited to serve on the committee. Members shall be appointed to serve staggered four-year terms. The Chief Justice shall select a chair from among the committee's members. The chair shall be appointed to serve a two-year term and may be appointed to serve additional two-year terms. Judges who serve as members of the committees generally shall not be selected as chairs.

(2)(~~EE~~) Vacancies. In the event of a vacancy on a committee due to death, incapacity, resignation or removal, the Supreme Court, after consultation with the committee chair, shall appoint a new committee member ~~in accordance with Paragraphs (1)(D) and (E). New members shall be appointed~~ to serve for the remainder of the term to which ~~they are~~ appointed.

(2)(~~GF~~) Absences. In the event that a committee member fails to attend three committee meetings during a calendar year, the chair shall notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.

(2)(~~HG~~) Administrative assistance. The Administrative Office of the Courts shall ~~provide~~ coordinate staff support to each committee, including the assistance of the Office of General Counsel ~~general counsel~~ in research and drafting and the coordination of secretarial support and publication activities. ~~The Office of General Counsel shall assign a staff attorney to each committee to provide research and drafting assistance and to coordinate the publication activities of the committee.~~

(2)(~~IH~~) Recording secretaries. ~~The Office of General Counsel~~ A committee chair may appoint a third-year law student, a ~~or~~ member of the Bar in good standing, or a legal secretary to serve as a recording secretary for ~~each~~ the committee. ~~The recording secretary shall be appointed to serve a one-year term.~~ The recording secretary, ~~under the general supervision of the staff attorney,~~ shall attend and take minutes at committee meetings, provide research and drafting assistance to committee members and perform other assignments as requested by the chair. ~~Recording secretaries shall be paid an honorarium for their services.~~

(23) Responsibility of advisory rules committees.

(3)(A) Petitions. Petitions for the adoption, repeal or amendment of a rule of procedure, ~~or evidence, or a rule governing the practice of law~~ professional conduct, or a jury instruction may be ~~filed~~ submitted by any interested individual ~~with~~ to the Utah Supreme Court's ~~Advisory Rule Committees, Administrative Office of the Courts, 450 South State St., P.O. Box 140241, Salt Lake City, Utah 84114-0241.~~ Petitions shall be in writing, shall set forth the proposed rule, ~~or amendment,~~ or instruction, or the text of the rule or instruction proposed for repeal, and shall specify the need for and anticipated effect of the proposal.

(3)(B) Committee agenda. The ~~Office of General Counsel~~ Supreme Court shall forward all submitted petitions ~~filed with the Supreme Court's Advisory Committees~~ to the chair of the appropriate committee. All petitions shall be placed on the committee's agenda for consideration and the committee shall provide written notification of committee action to all individuals who file a petitions.

(3)(C) Committee work. Committees shall meet as a whole, at the direction of the chair, to discuss and vote upon individual and subcommittee recommendations and to prepare written recommendations to the Supreme Court concerning petitions or committee-initiated proposals. Minutes shall be taken at all meetings of the committee of the whole and shall be forwarded to the ~~committee's~~ Supreme Court's liaison for the committee.

(34) Public comment.

(4)(A) Submission of final rules recommendations. Each advisory rules committee shall vote upon and finalize its recommendations and any proposed committee notes for public comment and submit ~~its final recommendations~~ them to the Administrative Office of the Courts for publication and distribution.

(4)(B) Publication. The Administrative Office of the Courts shall publish the final committee recommendations ~~of each committee~~ and any proposed committee notes for a 45-day comment period. The comment period will run from the expected publication date of the law reporter service in which the rules will appear. The purpose of the comment period shall be to solicit written or oral comment concerning the committees' recommendations and to request input on the committees' agenda.

(4)(C) Distribution.

(4) Copies of proposed rules and any advisory committee ~~comments~~ notes shall be distributed as

~~provided in Rule 2-203. to the Governor, chairs of the Judicial Rules Review Committee, the director of the Office of Legislative Research and General Counsel, the Executive Director of the Commission on Criminal and Juvenile Justice, the chair of each Advisory Committee, the Executive Director of the Utah State Bar, Chief Disciplinary Counsel of the Office of Attorney Discipline, all judges, and, upon request, any other person.~~

~~(ii) Copies of proposed rules and any advisory committee comments shall be distributed to at least two regularly published law reporter services.~~

~~(iii) At the Advisory Committees' discretion, copies of a proposed rule may be distributed to identified group(s).~~

~~(iv) Notice of proposed changes shall be mailed to each active member of the Utah State Bar. The notice shall include a summary of the proposed changes and identify where the full text of proposed rules and any advisory committee comments are available.~~

~~(v) All information provided by this paragraph (C) shall include the deadline for public comment and to whom public comment should be sent.~~

(4)(D) Comment. The committees have the discretion to limit public comment to oral or written comment. Written comment shall be submitted to the Administrative Office of the Courts. Oral comment shall be scheduled for hearing at the convenience of the committee during the 45-day comment period.

~~(E) Request for petitions. During the comment period, the committees shall also request bar members and other interested individuals to file petitions with the Supreme Court's Advisory Committees in accordance with Paragraph (2)(A) for the purpose of identifying issues for committee study.~~

(4)(~~F~~E) Committee review. Upon the expiration of the comment period, the Administrative Office of the Courts shall compile all of the written comment received and forward it to the appropriate committee chair. The chair shall convene a meeting of the committee for the purpose of reviewing the public comment and discussing and voting upon appropriate modifications to the rules.

(4)(~~G~~F) Transmittal. Once the committee has reviewed the public comment and voted upon the final modifications to the proposed rules and committee notes, it shall submit a letter of transmittal to the Supreme Court with a copy of the committee's final proposals, a summary of the public comment and the committee's recommendations in response to the comment.

(5) Responsibility of Utah State Bar, or other entities, as to proposed amendments to rules pertaining to the practice of law.

(5)(A) Petitions. Petitions for the adoption, repeal or amendment of rules or procedures governing, affecting, or pertaining to the practice of law, other than the rules of professional conduct, shall be filed with the Utah Supreme Court. Petitions shall set forth the proposed rule or amendment or the text of the rule proposed for repeal and shall specify the need for and anticipated effect of the proposal.

(5)(B) Publication. After preliminary review of the petition, the Supreme Court shall submit the proposed rule or amendments to the Administrative Office of the Courts to be published for a 45-day comment period.

(5)(C) Distribution. Distribution of the proposed rule or amendments shall be as provided in Rule 2-203.

(5)(D) Supreme Court review. Upon the expiration of the comment period, the Administrative Office of the Courts shall compile all of the written comment received and forward it to the Supreme Court.

(5)(E) Petitioner's review. Following receipt of the written comment, the Supreme Court shall submit a copy of the comments to the entity who filed the petition seeking the rule change. Petitioner shall review the comments and vote upon final modification to the rules or procedures. Once petitioner has completed its review and voted upon the final modifications, it shall submit a memorandum to the Supreme Court containing the petitioner's final proposals, a summary of the public comment, and the petitioner's recommendations in response to the public comment.

~~(4)~~ (6) Responsibility of Supreme Court responsibilities.

(6)(A) Court liaison. The Supreme Court shall designate a representative of the Court to serve as a liaison for to each advisory rules committee and to the Utah State Bar.

(6)(B) Advisory rules committee proposals. The Supreme Court shall consider committee proposals and adopt, modify or reject those proposals. The Supreme Court shall send a letter of transmittal to each notify committee chairs and the Administrative Office of the Courts notifying the committees of the as to which proposals which were adopted, modified or rejected.

(6)(C) Petitions concerning rules or procedures pertaining to the practice of law. The Supreme Court shall consider petitions and petitioners' memoranda and adopt, modify, or reject the proposals made and enter an appropriate order.

(6)(~~C~~D) Court-initiated rules. In its discretion, the Supreme Court may adopt rules of procedure or evidence, rules regulating judges pro tempore and retired judges, rules governing the practice of law or modify or repeal those rules upon its own initiative and without proposals by the committees or the Utah State Bar. Court initiated rules shall be published for a 45-day public comment period in accordance with ~~p~~Paragraph (3).

(6)(~~D~~E) Effective date. Rules shall become effective 60 days after adoption by the Supreme Court unless otherwise ordered.

(6)(~~E~~F) Emergency rulemaking. Notwithstanding the other provisions contained in these rules, if the Supreme Court determines by an affirmative vote of the members of the Supreme Court that it is in the best interest of the judiciary to suspend the rulemaking procedures, the Supreme Court may take final action on a committee or Court-initiated proposal, approve the proposal and provide for an immediate effective date. The Supreme Court shall transmit a copy of the approved rule or committee note to each committee chair and the Administrative Office of the Courts. The Administrative Office of the Courts shall publish the rule for a 45-day comment period and submit any comments received during that period to the Supreme Court for consideration. The Supreme Court may then ratify, amend or repeal the rule.

(6)(~~F~~G) Publication. All rules adopted by the Supreme Court shall be published in the official publication for Supreme Court Rules.